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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

JESSICA WETHINGTON,

Plaintiff,

vs.

NETFLIX, INC., a Delaware Corporation

Defendant.

CV '09 1 047 AA
Case No.: _____

**DEFENDANT'S
NOTICE OF REMOVAL
(DIVERSITY)**

**[Multnomah County Circuit Court
Case No. 0908-10936]**

28881

TO THE CLERK OF THE U.S. DISTRICT COURT, PLAINTIFF and PLAINTIFF'S ATTORNEY OF RECORD HEREIN:

PLEASE TAKE NOTICE that Defendant Netflix, Inc. (hereafter "Defendant"), a Delaware Corporation, hereby removes this action from the Circuit Court of the State of Oregon for the County of Multnomah to the United States District Court for the District of Oregon.

1. Defendant is a party in a civil action brought against it in the Circuit Court of the State of Oregon for the County of Multnomah entitled: *Jessica Wethington v. Netflix, Inc.* Copies of the Summons and Complaint in that action are attached to this Notice of Removal ("Notice") as Exhibit A and constitute all process, pleadings, and orders that have been served on Defendant in that action up to the present date.

2. The state court action was commenced when a Complaint was filed with the county clerk of Multnomah County, Oregon, on or about August 5, 2009. On August 12, 2009, a copy of the Summons and Complaint were served on Defendant. Defendant has filed no pleadings in response to the Complaint. This notice of removal is filed within thirty (30) days after service of process.

3. Plaintiff is a resident of the State of Oregon. *See* Complaint, ¶ 1. Defendant is incorporated in Delaware and its principal place of business is in California. Declaration of Allison Hopkins, ¶ 2, attached hereto.

4. Plaintiff is seeking more than \$75,000 in her Complaint. *See* Complaint, ¶¶ 9, 10.

5. This is an action of civil nature over which the District Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a), in that it is a suit for damages between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000. The state court action is therefore removable pursuant to 28 U.S.C. § 1441.

6. As required by 28 U.S.C. § 1446(d), written notice of the filing of this petition and notice of removal has been given to Plaintiff, and a true and correct copy of this petition has been filed with the clerk of the Circuit Court for Multnomah County, Oregon.

7. This notice is signed pursuant to Federal Rule of Civil Procedure 11.

WHEREFORE, Defendant prays for removal of the action pending in the Circuit Court of the State of Oregon for Multnomah, bearing case No. 0908-10936, to this court, pursuant to 28 U.S.C. § 1441.

Date: September 1 , 2009

JACKSON LEWIS LLP

By: 

Scott Osborne, OSB #062333
Mark Crabtree, OSB #015070
Attorneys for Defendant
Netflix, Inc.

EXHIBIT A

In the Circuit Court of the State of Oregon

For the County of MultnomahJESSICA WETHINGTON,

Plaintiff(s),

vs.

NETFLIX, INC., a Delaware corporation.

Defendant(s).

Case No. 0908-10936

SUMMONS

To NATIONAL REGISTERED AGENTS, INC.3533 Fairview Industrial Drive SESalem, OR 97302-1155Registered Agent for Netflix, Inc.

Defendant

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7836.

SIGNATURE OF ATTORNEY OR AUTHOR FOR PLAINTIFF

Scott N. Hunt, OSB #92343

ATTORNEY'S / AUTHOR'S NAME (TYPED OR PRINTED)

BAR NO. (IF ANY)

621 S.W. Morrison Street, Suite 521

ADDRESS

Portland, Oregon 97205 (503) 248-0504

CITY

STATE

ZIP

PHONE

(503) 248-2131 shunt@busseandhunt.com

FAX (IF ANY)

ATTORNEY'S E-MAIL ADDRESS (IF ANY)

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED)

BAR NO.

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY(S) FOR PLAINTIFF(S)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JESSICA WETHINGTON,

Plaintiff,

v.

NETFLIX, INC., a Delaware corporation,

Defendant.

Case No. **0908-10936**

COMPLAINT
(Disability Discrimination; Oregon
Family Leave Act Discrimination;
Pregnancy Discrimination;
Wrongful Discharge)

CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiff alleges:

FIRST CLAIM FOR RELIEF

(Disability/Perceived Disability Discrimination - ORS 659A.112, *et. seq.*)

1.

Plaintiff is a resident and citizen of the State of Oregon.

2.

Defendant is a Delaware corporation doing business in Oregon. At all material times Defendant acted through agents and employees who at all material times acted within the course and scope of their agency and employment for Defendant.

3.

Plaintiff worked for Defendant in Oregon from on or about December, 2006 until

1 March 5, 2009 when Defendant terminated her employment.

2 4.

3 Prior to her termination Plaintiff was diagnosed with depression and anxiety. Prior to
4 her termination Plaintiff informed Defendant of her depression and anxiety and that she took
5 medication for those condition(s). At the time of her termination, Plaintiff's depression
6 and/or anxiety, individually or in combination, substantially limited her in one or more major
7 life activities, including, but not limited to, reading, concentrating, focusing, controlling her
8 bowels, interacting with others and/or sleeping. At times her medication caused side effects
9 which at times substantially limited her in major life activities, including but not limited to,
10 controlling her bowels, interacting with others and/or caring for herself.
11

12 5.

13
14 Prior to Plaintiff's termination, Plaintiff requested reasonable accommodation of her
15 mental condition(s), including taking more frequent breaks, and/or a schedule modification.
16 Although human resources arranged for certain accommodations to be provided, Defendant
17 failed and/or refused to provide additional accommodations Plaintiff requested, including but
18 not limited to, an assigned work station.
19

20 6.

21 Prior to her termination, Plaintiff complained about and/or reported to Defendant that
22 she felt she was denied certain requested accommodations and/or other accommodations that
23 would be helpful.
24

25 7.

26 As a result of Plaintiff's mental condition(s) and/or her need to take medication due to

1 that condition(s), Defendant perceived her to be disabled in that she was perceived to have a
 2 substantially limiting mental condition or conditions.

3 8.

4 Defendant discriminated against Plaintiff in one or more of the following particulars:

- 5 (a) removing her duties and responsibilities;
- 6 (b) limiting her work hours, no longer offering her additional hours, and/or
- 7 no longer allowing her to work additional hours;
- 8 (c) adversely adjusting her work schedule instead of providing the
- 9 modifications she requested as an accommodation of her disability;
- 10 (d) creating a hostile and/or retaliatory work environment;
- 11 (e) pressuring her to quit or not return to work after her pregnancy/
- 12 maternity (FMLA) leave;
- 13 (f) failing to fully and/or adequately accommodate her;
- 14 (g) failing to engage in the interactive process; and/or
- 15 (h) terminating her employment.

16 Defendant discriminated against Plaintiff as alleged above because of her disability, because
 17 of her medical history, because it perceived her to be a disabled person and/or in retaliation
 18 for her requesting a reasonable accommodation and/or additional accommodations.

19 9.

20 As a result of Defendant's conduct, Plaintiff suffered and continues to suffer
 21 emotional distress, all to her non-economic damage in an amount to be proven at trial, which
 22 amount is alleged to be \$500,000.

10.

As a further result of Defendant's conduct, Plaintiff suffered economic loss and continues to suffer such loss all to her damage in a sum to be proven at trial, which sum is alleged to be \$150,000.

11.

Defendant's conduct demonstrated a reckless and outrageous indifference to a reasonable risk of harm to Plaintiff, or a conscious indifference to her health and/or welfare, and Plaintiff reserves the right to allege punitive damages in an amount to be set by a jury.

12.

Pursuant to ORS 659A.885 and 20.107, Plaintiff is entitled to her reasonable attorneys' fees, expert witness fees, costs and disbursements.

SECOND CLAIM FOR RELIEF

(Oregon Family Leave Act Discrimination - ORS chapter 659A)

13.

Plaintiff realleges paragraphs 1 through 10, and 12.

14.

At all material times Defendant was a "covered employer," pursuant to ORS 659A.153, and subject to Oregon's Family Leave Act.

15.

At all material times after June 30, 2007, Plaintiff was an "eligible employee," pursuant to ORS 659A.156, entitled to the benefits and protections of Oregon's Family Leave Act.

16.

Starting in approximately July 2007, Plaintiff requested intermittent leave related to her serious health condition due to depression and/or anxiety. In approximately October 2008 Plaintiff informed Defendant she was pregnant and later requested pregnancy/maternity leave.

17.

Defendant initially granted Plaintiff's request for leave, then interfered with Plaintiff taking such leave, then denied her additional pregnancy/maternity leave, and/or then interfered with her taking maternity leave by threatening to not accommodate her depression/anxiety if she exhausted her pregnancy/maternity leave, and ultimately threatened her with termination if she used additional pregnancy/maternity leave.

18.

Plaintiff was terminated in substantial part for requesting and/or taking family medical leave and/or requesting pregnancy/maternity leave and/or to prevent her from using pregnancy/maternity leave.

19.

Plaintiff is entitled to back pay, reinstatement or front pay, prejudgment interest and reasonable attorneys' fees and expert witness fees pursuant to ORS 659A.885 and ORS 20.107.

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1 THIRD CLAIM FOR RELIEF

2 (Pregnancy Discrimination - ORS 659A.029 and ORS 659A.030)

3 20.

4 Plaintiff realleges paragraphs 1 through 12 and 16 through 17.

5 21.

6
7 Prior to her termination, Plaintiff learned she was pregnant and notified Defendant of
8 her pregnancy between approximately mid-September and mid-October 2008.

9 22.

10 Prior to her termination, Plaintiff asked Defendant for additional breaks, intermittent
11 medical leave, an assignment to a set work station, the provision of an ergonomic work
12 station, and/or a transfer to a different team due to her pregnancy.

13 23.

14
15 A substantial factor in Defendant's discrimination as alleged in paragraph 8, above,
16 and its decision to terminate Plaintiff was her pregnancy, her need for breaks due to her
17 pregnancy, and/or her request for an accommodation and/or leave due to her pregnancy.

18 FOURTH CLAIM FOR RELIEF

19 (Wrongful Discharge)

20 24.

21 Plaintiff realleges paragraphs 1 through 6, 9, 10, 11, 14 through 18, 21 through 23.

22 25.

23
24 Before her termination, Plaintiff requested and/or took family leave due to her serious
25 health condition and/or for pregnancy or maternity leave.

1 WHEREFORE, Plaintiff prays for judgment as alleged in the claim stated above.

2 DATED this 5th day of August, 2009.

3 BUSSE & HUNT

4
5 

6 SCOTT N. HUNT, OSB #92343

7 Telephone: (503) 248-0504

8 Facsimile: (503) 248-2131

9 *shunt@busseandhunt.com*

Of Attorneys for Plaintiff Jessica Wethington

10 TRIAL ATTORNEY:

11 SCOTT N. HUNT, OSB #92343

DECLARATION OF SERVICE

CASE: JESSICA WETHINGTON v. NETFLIX, INC.

CASE NO.:

CLIENT: 136758

I, Jeffrey B. Meade, declare that I am employed with the law firm of Jackson, Lewis, LLP, whose address is 806 SW Broadway, Ste. 400, Portland OR 97205; I am over the age of eighteen (18) years and am not a party to this action.

On September 15th, 2009, I served the attached **DEFENDANT'S NOTICE OF REMOVAL, DECLARATION OF ALLISON HOPKINS IN SUPPORT THEREOF** and **CIVIL COVER SHEET** in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Scott N. Hunt
Busse & Hunt
621 SW Morrison, Suite 521
Portland, OR 97205

☒ **BY MAIL:** United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Portland Oregon.

☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above named addressee.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under the penalty of perjury under the laws of the United States of American and the state of Oregon that the foregoing is true and correct.

Executed on September 15th, 2009, at Portland, Oregon.



Jeffrey B. Meade